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## MEMORANDUM

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TO: Docket Control  
Arizona Corporation Commission

FROM: Ernest G. Johnson  
Director  
Utilities Division

DOCKETED

DEC - 5 2008

Date: December 5, 2008

DOCKETED BY

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RE: SUPPLEMENTAL STAFF REPORT FOR THE APPLICATION OF JOHNSON UTILITIES, L.L.C. FOR AN EXTENSION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY (DOCKET NO. WS-02987A-07-0487)

On August 21, 2007, Johnson Utilities, L.L.C. ("Johnson" or "Company") filed an application with the Arizona Corporation Commission ("ACC" or "Commission") for authorization to extend its current Certificate of Convenience and Necessity ("CC&N") in Pinal County, Arizona. On June 3, 2008, Staff determined that the Company's revised application met the sufficiency requirements per Arizona Administrative Code Section R14-2-103.B.7. On July 7, 2008, Staff filed its Staff Report recommending conditional approval of the Company's application.

On August 7, 2008, a hearing was convened at the Commission offices in Phoenix, Arizona. During the hearing, the Administrative Law Judge ("ALJ") requested the Company to file certain information as late-filed Exhibits on or before November 14, 2008. Further, the ALJ requested Staff to file a response to the Company's late-filed exhibits on or before December 5, 2008. On October 6, 2008, the ALJ issued a Procedural Order requesting the Company to file as follows:

**IT IS THEREFORE ORDERED** that Johnson shall file, on or before November 14, 2008, as late-filed exhibit, a sworn and notarized document from the developers in the proposed extension areas, detailing the developers' plan for the proposed extension areas, including, but not limited to, a status report on where the developers are in meeting State and County agency requirements, as well as the timeframes for building in the proposed developments. The late-filed exhibits shall include a detailed description of the developers' plan for the various phases of development, including the timing and size of each proposed phase.

**IT IS FURTHER ORDERED** that Johnson shall file, on or before November 14, 2008, as late-filed exhibit, a sworn and notarized document, from the developers in the proposed extension areas, detailing

any conservation mechanisms that will be deployed within the proposed CC&N areas including, but not limited to, the use of reclaimed water, plans for golf courses or other large turf areas and whether groundwater will be used to irrigate those areas, and any plan for lakes or other ornamental water features.

**IT IS FURTHER ORDERED** that Johnson shall file, on or before November 14, 2008, a status report on the Notice of Violation issued by the Arizona Department of Environmental Quality ("ADEQ") in March and May 2008, relating to the sanitary sewer overflows. The late-filed exhibits shall include, but not limited to, a discussion on whether or not Johnson has met the filing requirements directed by ADEQ, the status of the testing for e-coli and fecal coliform required by ADEQ subsequent to the NOV, and the results of those tests.

**IT IS FURTHER ORDERED** that Johnson shall file, on or before November 14, 2008, a status report on the lawsuit filed by the Pecan Creek Homeowners Association.

On November 14, 2008, the Company filed its responses to the aforementioned requirements. The Company submitted sworn and notarized letters from the J. O. Combs Unified School District #44, for the J. O. Combs Education Village; and the United Engineering Group, on behalf of the developer of Skyline Estates, Skyline and Quail, LLC. The Company reports that the developer of Quail Run Estates has not yet provided it with a sworn and notarized document. However, the Company avows that the developer of Quail Run Estates has indicated that it does not intend to include a golf course, lake or ornamental water feature in its proposed development. Also, Quail Run Estates does not intend to utilize effluent within its development.

As it relates to the ADEQ Notice of Violation ("NOV"), the Company contends that although it has not received a compliance status report indicating full compliance, all alleged violations have been successfully resolved with ADEQ.

Further, the Company reports that a lawsuit filed against it by the Pecan Creek Homeowners Association ("Association") has been ruled in favor of the Association, thus terminating an Open Space Lease Agreement between the Association and Johnson. Termination of the Agreement eliminates the Company's contractual right to possession of the property for purposes of operating an underground effluent recharge facility. The Company claims that the Court simultaneously entered an Order for Stay Pending Appeal so that it can appeal the judgment while retaining possession of the leased property, subject to certain conditions. The Company reports that on August 21, 2008, it filed a condemnation action against the Association, and that the action is pending.

Staff has reviewed the Company's late-filed exhibits and concludes that the additional information does not invalidate its prior conclusions, as indicated in its Staff Report. Accordingly, Staff continues to support Commission conditional approval of Johnsons' application for CC&N extension.

EGJ:AIL:tdp

Originator: Alexander Ibhade Igwe, CPA

Attachment: Original and 13 Copies

Service List for: Johnson Utilities, L.L.C.  
Docket No. WS-02987A-07-0487

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